

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ALBERT BEHLER

Plaintiff,

- v -

KAI-SHING TAO,

Defendant.

INDEX NO. 652567/2020

MOTION DATE 10/07/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISS.

Upon the foregoing documents, Kai-Shing Tao’s motion to dismiss the complaint must be granted because Digipac, LLC’s (**Digipac**) operating agreement (NYSCEF Doc. No. 13) does not provide for an automatic exit option and the operating Agreement otherwise indicated that it superceded any prior or contemporaneous agreement (*id.* at § 13.2). Alan Behler is bound by the operating agreement because he is a member of Digipac (NYSCEF Docs. No. 18-20). It does not matter that he did not sign it (6 Del C § 18-101(9); *See also Seaport Village Ltd v Seaport Village Operating Company, LLC*, 2014 WL 4782817 [Del. Ch. 2014]). In addition, the terms of this alleged oral agreement are unenforceable because they are indefinite and incapable of being enforced. No agreement or formula is alleged as to the terms of any such exit option after the five years the defendant purportedly promised to provide him with an exit strategy (*Marlio v McLaughlin*, 288 AD2d 97, 99 [1st Dept 2001]). The promissory estoppel claim fails because Mr. Behler’s reliance on Mr. Tao’s alleged promise was unreasonable based on the lack of

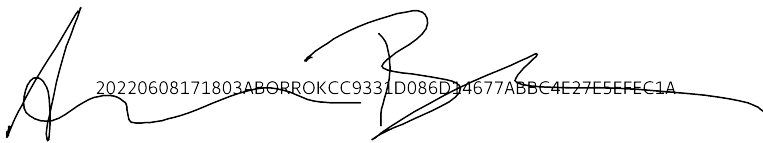
definite terms as to any purported guaranteed exit strategy. Therefore, the motion to dismiss must be granted.

The Court has considered the remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Kai-Shing Tao’s motion to dismiss the complaint is granted; and it is further

ORDERED that the complaint is dismissed.



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6/8/2022
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE